

RONALD WILLDEN

IBLA 81-378

Decided November 24, 1981

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void. OR MC 9794 through OR MC 9800.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Deficiencies under the regulations in the content of an affidavit of assessment work or notice of intention to hold filed with the Bureau of Land Management with respect to an unpatented mining claim may be considered curable and do not result in a conclusive presumption of abandonment of the claim where the filing meets the requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recording office where the

notice of location is recorded and a copy thereof with the Bureau of Land Management prior to Dec. 31 of the year following the calendar year in which the claim was located under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Ronald Willden, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Ronald Willden has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated January 29, 1981, declaring the Sawmill No. 1 through Sawmill No. 7 mining claims, OR MC 9794 through OR MC 9800, abandoned and void for failure to file on or before December 30, 1979, evidence of annual assessment work or notices of intention to hold the claims, pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

Appellant's mining claims were located in October 1978 and filed for recordation with BLM on November 22, 1978. In the cover letter accompanying appellant's notices of location, dated November 10, 1978, he stated: "Inasmuch as no assessment work will be required on these claims until after September 1, 1979 * * * would you please regard this letter as my formal notice of intent to hold the claims?" In a letter to appellant dated July 16, 1979, BLM responded:

You are correct that State law does not require you to file an assessment statement for the period ending September 1, 1979 because your claims were located during the assessment year. However, the Federal Land Policy and Management Act of October 21, 1976, provides that an owner of an unpatented mining claim located after the Act shall file either an assessment statement or a notice of intention to hold claim with BLM following the calendar year in which the claim was located.

Since your claims were located on October 9, 1978, this office must receive a copy, that evidences county recordation, of either an assessment statement or notice of intention to hold on or before December 30, 1979 or your claims will be void. 43 CFR 3833.4(a).

Please mark the BLM mining claim (OR MC) serial numbers on the notice of intention to hold claims that you record with the county.

Forms and contents of a notice are explained in 43 CFR 3833.2-3(a).

On December 17, 1979, appellant filed an affidavit of assessment work with the county recording office with respect to the subject mining claims "for the assessment year ending at noon on September 1, 1980." A copy of this affidavit with a cover letter dated February 19, 1980, was received by BLM on February 25, 1980.

In his statement of reasons for appeal, appellant contends that as assessment work was not required by "existing law" for the 1979 assessment year (September 1, 1978, to September 1, 1979) because his mining claims were located within that assessment year, he was required to file notices of intention to hold the claims and that his November 10, 1978, cover letter should be treated as such notice. He states: "I believe that it complied with the spirit of the Bureau of Land Management regulations, which required notification prior to Dec. 30, 1979, that I intended to hold the claims, if not with the strict letter of those regulations."

In the alternative, appellant argues that Congress intended that only documents required to be filed under existing law were required to be filed with BLM. Appellant states that notices of intention to hold the claims for the 1979 assessment year were not required to be filed under existing law, where such law exempted the claims "from assessment work requirements, or recording proof thereof, until the following assessment year."

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), provides, in pertinent part, that:

The owner of an unpatented lode or placer mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for the record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on [sic] a detailed report provided by section 28-1 of title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground. [Emphasis added.]

Failure to file the required instruments is, by terms of the statute, considered conclusively to constitute abandonment of a mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and the claim is properly declared void. 43 CFR 3833.4(a); see Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 1981), cert. denied, 50 U.S.L.W. 3369 (Nov. 10, 1981) (No. 81-130).

The notice of intention to hold filed with BLM must be "an exact legible reproduction or duplicate [of the instrument] * * * filed for record * * * in the local jurisdiction of the State where the claim is located and recorded." 43 CFR 3833.2-3; see Pacific Coast Mines, Inc., 53 IBLA 200 (1981). A notice of intention to hold which does not comply with the form requirements of 43 CFR 3833.2-3 ("Form -- notice of intention to hold claim or site"), to the extent that the regulatory requirements regarding content go beyond the requirements of the statute, will not result in a claim being declared abandoned and void. Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981), and cases cited therein. However, where the notice clearly is not a copy of a notice of intention to hold filed in the local recording office, as required by the terms of the statute, a claim is properly declared abandoned and void. Ted Dilday, supra; Pacific Coast Mines, Inc., supra at 202. This is the situation herein. Further, the cover letter filed in November of 1978 would not establish compliance with the statutory requirement of filing notice of intention to hold or evidence of assessment work "prior to December 31 of each year following the calendar year in which the said claim was located." 43 U.S.C. § 1744(a) (1976) (emphasis added).

[2] It is true, as appellant states, that the mining law does not require performance of assessment work until the assessment year commencing on the first day of September succeeding the date of location of the claim. 30 U.S.C. § 28 (1976). Thus, appellant was not required to perform assessment work until sometime during the year running from September 1, 1979, to September 1, 1980. However, this does not obviate the necessity for compliance with section 314 of FLPMA, 43 U.S.C. § 1744 (1976), requiring filing of either an affidavit of assessment work or notice of intention to hold with both the local recording office and BLM by December 30 of the year following the calendar year in which the claim was located. Ted Dilday, supra, and cases cited therein.

The deadline for filing appellant's notices of intention to hold the claims was December 30, 1979, in the year following the calendar year in which the claim was located. In the absence of evidence that BLM did receive timely the notices of intention to hold, BLM properly declared the claims abandoned and void. David Truesdell, 57 IBLA 60 (1981); William J. Kroetch, 57 IBLA 29 (1981). The Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

